

2005 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB320)

Received: **10/12/2005**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **Mike Richards**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - electron com**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unsolicited electronic mail: add "phishing" prohibition, definitions for internet, identifying information, etc.

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 10/13/2005 mdsida 10/13/2005	wjackson 10/17/2005		_____ _____ _____ _____			
/P1	csundber 10/18/2005	wjackson 10/18/2005	rschluet 10/17/2005	_____ _____	sbasford 10/17/2005		
/1			pgreensl 10/18/2005	_____ _____	sbasford 10/18/2005	sbasford 10/18/2005	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

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/?	csundber 10/13/2005 mdsida 10/13/2005	wjackson 10/17/2005 <i>1/11/10/18</i>		<u> </u> <u> </u> <u> </u> <u> </u>			
/P1			rschluet 10/17/2005 <i>10/18</i> <i>ps</i>	<u> </u> <i>1/18</i> <i>18/18</i>	sbasford 10/17/2005		
FE Sent For:							

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/?	csundber						
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10/17/05

10/17/05

FE Sent For:

<END>

10/19!

Changes to Senate Bill 320
LRB 2744/3
Thursday, October 6, 2005

Page 5, add to Section (2)(a) another subsection—7---to the draft to read:

It shall be unlawful for any person, by means of a web page, electronic mail message, or otherwise through use of the Internet, to solicit, request, or take any action to induce another person to provide identifying information by representing itself to be a business without the authority or approval of the business. {From 2005 California Bill 355}

- ✓ • Add definition: "Web page" means a location that has a single uniform resource locator or other single location with respect to the Internet {From 2005 California Bill 355}
- ✓ • Add definition: "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks, including the graphical sub-network known as the world wide web. {Ohio 125th General Assembly, Substitute House Bill 204, section 1.59 (k)}
- ✓ • Add definition: "Identifying information" means, with respect to an individual, any of the following: {as defined in Wisconsin State Statutes 943.201(1) (b)}
 1. The unique identifying driver number assigned to the individual by the department of transportation under s. 343.17 (3) (a) 4 {Wis. Stat. 943.201 (1) (b) 4}
 2. An individual's social security number {Wis. Stat. 943.201 (1) (b) 5}
 3. The identifying number of a depository account, as defined in s. 815.18 (2) (e), of an individual {Wis. Stat. 943.201 (1) (b) 9}
 - ④. {Wis. Stats. 943.201 (1) (b) 12 a-c} Any of the following, if it can be used, alone or in conjunction with any access device to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds:
 - a. An individual's code or account number.
 - b. An individual's electronic serial number, mobile identification number, personal identification number, or other telecommunication service, equipment or instrument identifier.
 - c. Any other means of account access.
 5. An individual's unique biometric data, including fingerprint, voice, retina or iris image, or other unique physical representation. {Wis. Stats. 943.201 (1) (b) 13}
 - ⑥. Any other information or data that is unique to, assigned to, or belongs to an individual and that is intended to be used to access services, funds, benefits of any kind to which the individual is entitled. {Wis. Stat. 943.201 (1) (b) 14}
 7. An individual's electronic signature, as defined in s. 178.46 (1g) (c). {Wis. Stats. 178.46 (1g) (c)}

redundant?

- Violations under the newly created (2) (a) would be subjected to the Class H felony, with supplemental penalties if the individual actually uses the information for the purposes of the following:

1. Commit an act of identity theft
2. Sell the information for the purpose of committing identity theft, or misuse of the information

- ✓ • A supplemental penalty is imposed on a person from sending an electronic mail solicitation, which is in violation of this section or rule promulgated under this section, the person shall be subject to a supplemental forfeiture not to exceed \$10,000 for that violation if the court finds that the defendant knew, or should have known that the defendant sent the electronic mail solicitation to a computer to which a minor has access. {LRB 3175 from 2003—Robin Kite drafter}
- ✓ • Page 2, under definition of electronic mail service provider, line 13, add “..providing Internet user with AN E-MAIL ADDRESS AND the ability to send...”
- ✓ • Page 3, under definition of electronic mail solicitation:
 1. on line 2 delete non-profit organization
 2. on line 1 add to the phrase: “...means an electronic mail message, including any attached program or document, that is sent...”
- ✓ • Page 3, delete the definition of non-profit organization
- ✓ • Page 3, line 15 delete word “Knowingly” ~~and change word Send to Sends~~
- ✓ • Page 3, line 18 delete word “Knowingly” ~~and change word Send to Sends~~
- ✓ • Page 3, line 21, delete word “Knowingly” ~~and change word Send to Sends~~
- ✓ • Page 4, line 10, delete word “Knowingly” ~~and change word to plural form~~
- ✓ • Page 4, line 21, delete word “Knowingly”
- ✓ • Page 7, line 10 delete entire line, it is not needed in this draft
- ✓ • Page 5, line 9-10, the word “shall” should be changed to allow for the discretion of DATCP to investigate. Every claim could prove costly if they are forced to investigate every instance.
- If we need a definition for “unsolicited” then we would like to use: “Unsolicited means not addressed to a recipient with whom the sender has an existing business or personal relationship, and not sent at the request of, or with the express consent of, the recipient” {North Carolina section 14-453 (1) effective December 1, 1999} ** in this case, the definition of prior business relationship definition is going to be somewhat like the current ATCP Rules 127.80(2) “Client Definition”

unnecessary? →

Sundberg, Christopher

From: Richards, Mike
Sent: Wednesday, October 12, 2005 4:41 PM
To: Sundberg, Christopher
Subject: RE: SB320 sub

Follow Up Flag: Follow up
Flag Status: Red

An act of identity theft--good question.

An act of identity theft should be in 943.201 (2) through (c) and we can put an extra \$10,000 on top of it if it is done through phishing. Does this make sense.

From: Sundberg, Christopher
Sent: Wednesday, October 12, 2005 4:34 PM
To: Richards, Mike
Subject: SB320 sub

Question: The instructions indicate that there should be supplemental penalty for an individual who uses information obtained through "phishing" to "commit an act of identity theft". What is "an act of identity theft," and what should the supplemental penalty be?

Christopher Sundberg
Legislative Attorney
Legislative Reference Bureau
(608) 266-9739
christopher.sundberg@legis.state.wi.us

In: 10/14/05
Due: 10/17/05 (Monday)

50250/P1

2005 - 2006 LEGISLATURE

LRB-2744/3

CTS:wjl:pg

↑ stays

Senate Substitute Amendment

to **2005 SENATE BILL 320**

D-N

LPS: The drafter has indicated inserts to be placed before the line numbers rather than after

Except for "Ins 8/2 MD"

September 9, 2005 - Introduced by Senators KANAVAS, STEPP, LEIBHAM, DARLING, LASSA, OLSEN, COWLES and ROESSLER, cosponsored by Representatives DAVIS, FREESE, FRISKE, HUNDERTMARK, RHOADES, GRONEMUS, LOEFFELHOLZ, OTT, GUNDERSON, ALBERS, KREIBICH, TOWNSEND, PETTIS, MOLEPSKE and SHILLING. Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

Regen

- 1 AN ACT *to amend* 100.264 (2) (intro.) and 165.25 (4) (ar); and *to create* 100.54
- 2 of the statutes; **relating to:** regulating certain electronic mail solicitations and
- 3 practices related to electronic mail solicitations and providing penalties.

Analysis by the Legislative Reference Bureau

This bill imposes certain requirements and restrictions upon persons who send electronic mail solicitations. The bill defines an electronic mail solicitation as an electronic mail message that is sent by a person other than a nonprofit organization or a state or federal agency without the consent of the recipient for the purpose of selling, leasing, or offering to sell or lease property, goods, or services to the recipient.

The bill prohibits all of the following: 1) knowingly sending an electronic mail solicitation that misrepresents the sender's identity, telephone number, return electronic mail address, street mailing address, or any information identifying the solicitation's transmission path; 2) knowingly sending electronic mail solicitations using an address, Internet user account, domain name, or Internet protocol address that the sender obtained by misrepresenting his or her identity; 3) knowingly selling an electronic mail address, without the address holder's permission, for the purpose of falsifying transmission information; 4) knowingly selling software that is designed to falsify electronic mail transmission information; and 5) collecting electronic mail addresses appearing on the Internet for the purpose of sending an electronic mail solicitation that contains certain fraudulent information.

The bill creates an affirmative defense to the sending of an electronic mail solicitation in violation of the provisions of this bill. The sender is entitled to that

SENATE BILL 320

defense if the sender demonstrates, by a preponderance of the evidence, that the electronic mail solicitation was sent in error and that the sender followed certain procedures, including providing recipients a reasonable opportunity to request that the sender send no further electronic mail solicitations.

The bill requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to investigate violations of the provisions of this bill and to maintain an Internet Web site that explains how a person may file a complaint with DATCP concerning such violations. Persons who violate the provisions of the bill are subject to civil and criminal penalties.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.264 (2) (intro.) of the statutes is amended to read:

2 100.264 (2) SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
3 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
4 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 or, 100.46, or 100.54 or
5 a rule promulgated under one of those sections, the person shall be subject to a
6 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
7 defendant, for which the violation was imposed, was perpetrated against an elderly
8 person or disabled person and if the court finds that any of the following factors is
9 present:

10 **SECTION 2.** 100.54 of the statutes is created to read:

11 **100.54 Electronic mail solicitations. (1) DEFINITIONS.** In this section:

12 (a) "Electronic mail service provider" means any person that is an intermediary
13 in providing Internet users with the ability to send or receive electronic mail.

an electronic mail address and

SENATE BILL 320

1 (b) "Electronic mail solicitation" means an electronic mail message that is sent
2 by a person other than a nonprofit organization of a state or federal agency without
3 the consent of the recipient for the purpose of selling or leasing or offering to sell or
4 lease property, goods, or services to the recipient.

5 (c) "Internet user" means a person that maintains an electronic mail address
6 with an electronic mail service provider.

7 (d) "Nonprofit organization" means an organization that is described in section
8 501 (c) (3) of the Internal Revenue Code and that is exempt from federal income tax
9 under section 501 (a) of the Internal Revenue Code.

10 (e) "Send" means to initiate the transmission of an electronic mail message, but
11 does not include any transmission of an electronic mail message by an electronic mail
12 service provider.

13 (2) PROHIBITIONS. (a) Except as provided in par. (b), no person may do any of
14 the following:

15 1. Knowingly send an electronic mail solicitation that misrepresents the
16 identity, telephone number, return electronic mail address, or street mailing address
17 of the person sending the electronic mail solicitation.

18 2. Knowingly send, conspire with another person to send, or aid or abet the
19 sending of an electronic mail solicitation that misrepresents or obscures information
20 identifying the transmission path of the electronic mail solicitation.

21 3. Knowingly send more than one electronic mail solicitation if any of the
22 following apply:

23 a. The person obtains 15 or more electronic mail accounts or Internet user
24 accounts by falsely representing the person's identity and uses such accounts to
25 knowingly send the electronic mail solicitations.

the

SENATE BILL 320

SECTION 2

1 b. The person obtains 2 or more Internet domain names by falsely representing
2 the person's identity and uses ^{the} such domain names to send the electronic mail
3 solicitations.

4 c. The person falsely represents the right to use 5 or more Internet protocol
5 addresses and uses ^{the} such Internet protocol addresses to send more than one electronic
6 mail solicitation intentionally.

7 d. Without authorization, the person accesses the protected computer of
8 another and intentionally sends more than one electronic mail solicitation using the
9 protected computer.

10 4. Knowingly ^g sell, give, or otherwise distribute, or possess with the intent to
11 sell, give, or otherwise distribute, software that is any of the following:

12 a. Primarily designed or produced for the purpose of facilitating or enabling the
13 falsification of electronic mail transmission information or other routing
14 information.

15 b. Of limited commercially significant purpose other than to facilitate or enable
16 the falsification of electronic mail transmission information or other routing
17 information.

18 c. Marketed by that person or someone in concert with that person for use in
19 facilitating or enabling the falsification of electronic mail transmission information
20 or other routing information.

21 5. Knowingly ^g sell an electronic mail address to another person for the purpose
22 of facilitating or enabling the falsification of commercial electronic mail
23 transmission information unless the seller first obtains the electronic mail address
24 holder's permission to sell that electronic mail address.

SENATE BILL 320

1 6. Collect electronic mail addresses appearing on the Internet for the purpose
2 of sending, or advertising in, an electronic mail solicitation that contains fraudulent
3 or misleading information or that solicits the sale or lease of fraudulent products or
4 services.

5 (b) Paragraph (a) 1. to 3. does not apply to a person who, through an automatic
6 technical process, transmits, routes, relays, handles, or stores an electronic mail
7 solicitation, if the identity or address of the recipient of the electronic mail
8 solicitation is determined by another.

9 **(3) ENFORCEMENT.** (a) The department shall investigate violations of this
10 section.

11 (b) The department shall maintain an Internet Web site that explains how a
12 person who receives electronic mail solicitation that violates this section may file a
13 complaint with the department. The Internet Web site shall be designed to enable
14 a viewer of the Web site to send a complaint to the department in the form of
15 electronic mail.

16 **(4) CRIMINAL PENALTIES.** (a) Except as provided in pars. (b) to (d), whoever
17 violates this section is guilty of a Class A misdemeanor.

18 (b) Whoever violates this section is guilty of a Class I felony if any of the
19 following apply:

20 1. The person sends more than 250 electronic mail solicitations in any 24-hour
21 period.

22 2. The violation causes a loss of more than \$500 in any 12-month period.

23 3. The person acts in concert with 3 or more others as a leader or organizer of
24 the conduct that violates this section.

SENATE BILL 320

(c) Whoever violates sub. (2) (a) 3. is guilty of a Class I felony, if the person obtains 20 or more electronic mail accounts or Internet user accounts by falsely representing the person's identity.

(d) Whoever violates this section is guilty of a Class H felony, if any of the following apply:

1. The person acted in furtherance of a felony.

2. The person has previously been convicted of violating any law of this state or another state, or a federal law, that regulates the transmission of electronic mail solicitations.

(e) In addition to the penalties authorized under pars. (a) to (d), a court may order that a person who is guilty of violating this section forfeit to the state any of the following:

1. Money or other things of value the person obtained as a result of violating this section.

2. Personal property used in connection with a violation of this section, if the owner of the personal property knew it was used in connection with a violation of this section.

(5) CIVIL FORFEITURES. The department may initiate a civil action against a person who violates this section and recover a civil penalty not to exceed the greater of \$25,000 per day of violation, or \$8 per electronic mail solicitation sent in violation of this section. An action under this subsection shall be initiated not later than 2 years after the last violation.

(6) AFFIRMATIVE DEFENSE. (a) It is an affirmative defense to the sending of an electronic mail solicitation in violation of this section if the person who sent the electronic mail solicitation demonstrates, by a preponderance of the evidence, that

in the following amounts: \$10

not to exceed the greater of \$25,000 per day of violation, or \$8 per electronic mail solicitation sent in violation of this section.

INS 6-23

SENATE BILL 320

1 the electronic mail solicitation was sent in error and the person did all of the
2 following:

3 1. Provided to recipients of the electronic mail solicitations a reasonable
4 opportunity to request that the person send no further electronic mail solicitations.

5 2. Established and implemented, with due care, reasonable practices and
6 procedures effectively to prevent the sending of electronic mail solicitations from
7 that person in violation of this section.

8 3. Trained the person's employees, if any, with regard to the requirements of
9 this section.

10 4. Maintained records demonstrating compliance with this section.

11 (b) No person may exercise the defense under par. (a) more than once in any
12 12-month period. A person exercises the defense if the defense is asserted in
13 response to any complaint made to the department about a violation of this section,
14 regardless of whether litigation has been initiated.

15 (7) IMMUNITY. An electronic mail service provider is immune from civil liability
16 for any good faith acts or omissions related to the blocking of electronic mail
17 solicitations sent in violation of this section.

18 (8) TERRITORIAL APPLICATION. This section applies to any interstate electronic
19 mail solicitation sent or received by a person in this state and any intrastate
20 electronic mail solicitation.

21 **SECTION 3.** 165.25 (4) (ar) of the statutes is amended to read:

22 165.25 (4) (ar) The department of justice shall furnish all legal services
23 required by the department of agriculture, trade and consumer protection relating
24 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
25 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50

SENATE BILL 320

SECTION 3

1 and, 100.51, and 100.54 and chs. 126, 136, 344, 704, 707, and 779, together with any
2 other services as are necessarily connected to the legal services.

3 **SECTION 4. Nonstatutory provisions.**

4 (1) The assembly chief clerk shall send a copy of this act to the attorney general
5 of each state and to the attorney general of the United States.

6 (END)

INS 8/2 MD✓

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0250/Plins
CTS:.....

Insert 3-5:

✓ (bg) "Identifying information" means any of the following:

1. The unique identifying driver number assigned to an individual by the department of transportation under s. 343.17 (3) (a) 4. ✓

2. An individual's social security number.

3. The identifying number of an individual's depository account, as defined in s. 815.18 (2) (e). ✓

4. An individual's unique biometric data, including fingerprint, voice, retina or iris image, or other unique physical representation.

5. An individual's electronic signature, as defined in s. 178.46 (1g) (c). ✓

6. Any other unique code, number, information, or data pertaining to an individual that can be used, alone or in conjunction with another object or device, to obtain, access, or transfer the individual's money, goods, services, benefits, or any other thing of value.

(br) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.

Insert 3-13:

(fm) "Web site" means a location on the Internet with a single uniform resource locator or any other single location on the Internet.

Insert 5-5:

7m. Solicit identifying information from another by using an electronic mail message, Internet web site, or other Internet communication, that represents that

1 the electronic mail message, Internet web site, or other Internet communication
2 originates from a business, without the authorization of the business.

3 **Insert 6-4:**

4 (cm) Whoever violates sub. (2) (a) 7. is guilty of a class H felony.

5 **Insert 6-24:**

6 (ff) 2. If the court finds the person sent an electronic mail in violation of this section
7 to a computer that the person knew or should have known was accessible to a minor,
8 the ~~penalty~~ under subd. 1. plus an additional forfeiture not to exceed \$10,000 per
9 violation. amount

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0250/PlinsMD
MGD:.....

1 **INSERT 8/2MD**

2 **SECTION ~~1~~ 943.201** (2m) of the statutes is created to read:

3 943.201 **(2m)** Notwithstanding the maximum fine specified s. 939.50 (3) (h),
4 a person who violates sub. (2) may be fined not more than \$20,000 if, in committing
5 that violation, the person used identifying information, as defined in s. 100.54 (1)
6 (bg), obtained through a violation of s. 100.54 (2) (a) 7.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0250/P1dn

CTS:1.....

WJ

Senator Kanavas:

This is a preliminary draft. Please review it carefully to ensure it is consistent with your intent and note the following:

1. I have rewritten the definition of "identifying information" because the definition proposed in the drafting instructions seemed to contain a number of redundancies. Is this okay?
2. Regarding the comment in the drafting instructions about including a definition for the term "unsolicited," I have not included a definition because the term does not appear in this draft.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0250/P1dn
CTS:wlj:rs

October 17, 2005

Senator Kanavas:

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Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

Sundberg, Christopher

From: Richards, Mike
Sent: Tuesday, October 18, 2005 8:46 AM
To: Sundberg, Christopher
Subject: Amendment to 320

Chris,

Two changes that I need in the draft. Otherwise it looks great:

Page 4 line 3 take out the word intentionally (per DATCP)

Page 5 line 9 change shall to may (per DATCP), otherwise the fiscal will be through the roof.

Michael D. Richards

Michael D. Richards
Office of State Senator Ted Kanavas
State Capitol, Room 10 South
Madison, WI 53707-7882
608-266-9174



State of Wisconsin
2005 - 2006 LEGISLATURE

In: 10/18/05
Due: today

LRBs0250/P1

CTS:wlj:rs

1 RMNR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE SUBSTITUTE AMENDMENT ,

TO 2005 SENATE BILL 320

Regen

1 AN ACT *to amend* 100.264 (2) (intro.) and 165.25 (4) (ar); and *to create* 100.54
2 and 943.201 (2m) of the statutes; **relating to:** regulating certain electronic
3 mail solicitations and practices related to electronic mail solicitations and
4 providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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6 100.264 (2) SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
7 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
8 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 or, 100.46, or 100.54 or
9 a rule promulgated under one of those sections, the person shall be subject to a
10 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
11 defendant, for which the violation was imposed, was perpetrated against an elderly

1 person or disabled person and if the court finds that any of the following factors is
2 present:

3 **SECTION 2.** 100.54 of the statutes is created to read:

4 **100.54 Electronic mail solicitations. (1) DEFINITIONS.** In this section:

5 (a) “Electronic mail service provider” means any person that is an intermediary
6 in providing Internet users with an electronic mail address and the ability to send
7 or receive electronic mail.

8 (b) “Electronic mail solicitation” means an electronic mail message, including
9 any program or document attached to the messages, that is sent by a person other
10 than a state or federal agency without the consent of the recipient for the purpose
11 of selling or leasing or offering to sell or lease property, goods, or services to the
12 recipient.

13 (bg) “Identifying information” means any of the following:

14 1. The unique identifying driver number assigned to an individual by the
15 department of transportation under s. 343.17 (3) (a) 4.

16 2. An individual’s social security number.

17 3. The identifying number of an individual’s depository account, as defined in
18 s. 815.18 (2) (e).

19 4. An individual’s unique biometric data, including fingerprint, voice, retina or
20 iris image, or other unique physical representation.

21 5. An individual’s electronic signature, as defined in s. 178.46 (1g) (c).

22 6. Any other unique code, number, information, or data pertaining to an
23 individual that can be used, alone or in conjunction with another object or device, to
24 obtain, access, or transfer the individual’s money, goods, services, benefits, or any
25 other thing of value.

1 (br) “Internet” means the international computer network of both federal and
2 nonfederal interoperable packet switched data networks, including the graphical
3 subnetwork known as the World Wide Web.

4 (c) “Internet user” means a person that maintains an electronic mail address
5 with an electronic mail service provider.

6 (e) “Send” means to initiate the transmission of an electronic mail message, but
7 does not include any transmission of an electronic mail message by an electronic mail
8 service provider.

9 (fm) “Web site” means a location on the Internet with a single uniform resource
10 locator or any other single location on the Internet.

11 (2) PROHIBITIONS. (a) Except as provided in par. (b), no person may do any of
12 the following:

13 1. Send an electronic mail solicitation that misrepresents the identity,
14 telephone number, return electronic mail address, or street mailing address of the
15 person sending the electronic mail solicitation.

16 2. Send, conspire with another person to send, or aid or abet the sending of an
17 electronic mail solicitation that misrepresents or obscures information identifying
18 the transmission path of the electronic mail solicitation.

19 3. Send more than one electronic mail solicitation if any of the following apply:

20 a. The person obtains 15 or more electronic mail accounts or Internet user
21 accounts by falsely representing the person’s identity and uses the accounts to
22 knowingly send the electronic mail solicitations.

23 b. The person obtains 2 or more Internet domain names by falsely representing
24 the person’s identity and uses the domain names to send the electronic mail
25 solicitations.

1 c. The person falsely represents the right to use 5 or more Internet protocol
2 addresses and uses the Internet protocol addresses to send more than one electronic
3 mail solicitation intentionally.

4 d. Without authorization, the person accesses the protected computer of
5 another and intentionally sends more than one electronic mail solicitation using the
6 protected computer.

7 4. Sell, give, or otherwise distribute, or possess with the intent to sell, give, or
8 otherwise distribute, software that is any of the following:

9 a. Primarily designed or produced for the purpose of facilitating or enabling the
10 falsification of electronic mail transmission information or other routing
11 information.

12 b. Of limited commercially significant purpose other than to facilitate or enable
13 the falsification of electronic mail transmission information or other routing
14 information.

15 c. Marketed by that person or someone in concert with that person for use in
16 facilitating or enabling the falsification of electronic mail transmission information
17 or other routing information.

18 5. Sell an electronic mail address to another person for the purpose of
19 facilitating or enabling the falsification of commercial electronic mail transmission
20 information unless the seller first obtains the electronic mail address holder's
21 permission to sell that electronic mail address.

22 6. Collect electronic mail addresses appearing on the Internet for the purpose
23 of sending, or advertising in, an electronic mail solicitation that contains fraudulent
24 or misleading information or that solicits the sale or lease of fraudulent products or
25 services.

1 7. Solicit identifying information from another by using an electronic mail
2 message, Web site, or other Internet communication that represents that the
3 electronic mail message, Web site, or other Internet communication originates from
4 a business, without the authorization of the business.

5 (b) Paragraph (a) 1. to 3. does not apply to a person who, through an automatic
6 technical process, transmits, routes, relays, handles, or stores an electronic mail
7 solicitation, if the identity or address of the recipient of the electronic mail
8 solicitation is determined by another.

9 (3) ENFORCEMENT. (a) The department ²shall investigate violations of this
10 section. *may*

11 (b) The department shall maintain an Internet Web site that explains how a
12 person who receives electronic mail solicitation that violates this section may file a
13 complaint with the department. The Internet Web site shall be designed to enable
14 a viewer of the Web site to send a complaint to the department in the form of
15 electronic mail.

16 (4) CRIMINAL PENALTIES. (a) Except as provided in pars. (b) to (d), whoever
17 violates this section is guilty of a Class A misdemeanor.

18 (b) Whoever violates this section is guilty of a Class I felony if any of the
19 following apply:

20 1. The person sends more than 250 electronic mail solicitations in any 24-hour
21 period.

22 2. The violation causes a loss of more than \$500 in any 12-month period.

23 3. The person acts in concert with 3 or more others as a leader or organizer of
24 the conduct that violates this section.

1 (c) Whoever violates sub. (2) (a) 3. is guilty of a Class I felony, if the person
2 obtains 20 or more electronic mail accounts or Internet user accounts by falsely
3 representing the person's identity.

4 (cm) Whoever violates sub. (2) (a) 7. is guilty of a class H felony.

5 (d) Whoever violates this section is guilty of a Class H felony, if any of the
6 following apply:

7 1. The person acted in furtherance of a felony.

8 2. The person has previously been convicted of violating any law of this state
9 or another state, or a federal law, that regulates the transmission of electronic mail
10 solicitations.

11 (e) In addition to the penalties authorized under pars. (a) to (d), a court may
12 order that a person who is guilty of violating this section forfeit to the state any of
13 the following:

14 1. Money or other things of value the person obtained as a result of violating
15 this section.

16 2. Personal property used in connection with a violation of this section, if the
17 owner of the personal property knew it was used in connection with a violation of this
18 section.

19 (5) CIVIL FORFEITURES. (a) The department may initiate a civil action against
20 a person who violates this section and recover a civil penalty in the following
21 amounts:

22 1. Not more than the greater of \$25,000 per day of violation, or \$8 per electronic
23 mail solicitation sent in violation of this section.

24 2. If the court finds the person sent an electronic mail in violation of this section
25 to a computer that the person knew or should have known was accessible to a minor,

1 the amount under subd. 1. plus an additional forfeiture not to exceed \$10,000 per
2 violation.

3 (b) An action under this subsection shall be initiated not later than 2 years after
4 the last violation.

5 (6) AFFIRMATIVE DEFENSE. (a) It is an affirmative defense to the sending of an
6 electronic mail solicitation in violation of this section if the person who sent the
7 electronic mail solicitation demonstrates, by a preponderance of the evidence, that
8 the electronic mail solicitation was sent in error and the person did all of the
9 following:

10 1. Provided to recipients of the electronic mail solicitations a reasonable
11 opportunity to request that the person send no further electronic mail solicitations.

12 2. Established and implemented, with due care, reasonable practices and
13 procedures effectively to prevent the sending of electronic mail solicitations from
14 that person in violation of this section.

15 3. Trained the person's employees, if any, with regard to the requirements of
16 this section.

17 (b) No person may exercise the defense under par. (a) more than once in any
18 12-month period. A person exercises the defense if the defense is asserted in
19 response to any complaint made to the department about a violation of this section,
20 regardless of whether litigation has been initiated.

21 (7) IMMUNITY. An electronic mail service provider is immune from civil liability
22 for any good faith acts or omissions related to the blocking of electronic mail
23 solicitations sent in violation of this section.

(8) TERRITORIAL APPLICATION. This section applies to any interstate electronic mail solicitation sent or received by a person in this state and any intrastate electronic mail solicitation.

SECTION 3. 165.25 (4) (ar) of the statutes is amended to read:

165.25 (4) (ar) The department of justice shall furnish all legal services required by the department of agriculture, trade and consumer protection relating to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18, 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50 and, 100.51, and 100.54 and chs. 126, 136, 344, 704, 707, and 779, together with any other services as are necessarily connected to the legal services.

SECTION 4. 943.201 (2m) of the statutes is created to read:

943.201 (2m) Notwithstanding the maximum fine specified in s. 939.50 (3) (h), a person who violates sub. (2) may be fined not more than \$20,000 if, in committing that violation, the person used identifying information, as defined in s. 100.54 (1) (bg), obtained through a violation of s. 100.54 (2) (a) 7.

SECTION 5. Nonstatutory provisions.

(1) The assembly chief clerk shall send a copy of this act to the attorney general of each state and to the attorney general of the United States.

(END)